

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6890 of 1999

to

FIRST APPEAL No 6903 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

SPECIAL LAND ACQUISITION OFFICER

Versus

CHHATRASINH ANDARSINH CHAUHAN

Appearance:

MR S.J.DAVE, AGP for Appellants

MR K.M. SHETH, for Respondents-claimants.

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE C.K.BUCH

Date of decision: 08/05/2000

ORAL COMMON JUDGEMENT (PER : M.H.KADRI, J)

1. Appellants filed these appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, against common judgment and award dated 7th October, 1998 passed by the learned 2nd Extra Assistant Judge, Vadodara in Land Reference Case Nos. 25/91 to 38/91. As common questions of facts and law arise for our consideration, we propose to dispose of all these appeals by this common judgment.

2. Agricultural lands of the respondents-claimants were placed under acquisition for the purpose of Narmada Canal Project by issuance of notification under sec.4(1) of the Act which came to be published in the Government Gazette on 2nd March, 1985. After following usual procedure, declaration under Section 6 of the Act was made which was published in the Government Gazette on 18th March, 1986. Respondents land owners were served with notices under sec.9(3) & (4) of the Act. Land Acq.Officer, on the basis of material produced before him, made his award on 8th January, 1988 and offered compensation for the acquired lands at the rate of Rs.1.00 per sq.mt. The respondents- claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the Court for determination of adequate compensation. Accordingly, references were made to the District Court, Vadodara which were numbered as Land Reference Cases Nos. 25/91 to 38/91. All the land reference cases came to be consolidated and the parties led common evidence in Land Reference Case No. 33/91.

3. Before the Reference Court, the claimants claimed enhanced compensation at the rate of Rs.10/ per sq.mt. Claimants to substantiate their claim of enhanced compensation, examined Surendrasinh Mulubha Gohil at exh.12 who was claimant of Land Reference Case No.31/99. Witness, during his examination, has produced documentary evidence such as 7/12 extracts and the previous award rendered in Land Ref. Case No. 666/90 to 688/90 in respect of the agricultural lands of very same village Rajpura. Witness also produced judgment of this Court rendered in First Appeal Nos. 2881/95 to 2891/95 in respect of agricultural lands of village Kanjari.

4. Appellants examined Mr. Pankajkumar Lalubhai who was working as Deputy Collector at the relevant time at exh.39. Reference Court, on appreciation of oral as well as documentary evidence, concluded that previous award

exh.36 rendered in Land Ref. Case Nos.666/90 to 688/90 in respect of acquired lands of the same village Rajpura, was relevant and comparable for the determination of market value of the acquired lands. Reference Court further observed that for the acquired lands of adjoining village Kanjari, Division Bench of this Court in First Appeal Nos. 2881/95 to 2891/95 had determined the market value of the acquired lands of village Kanjari as on 30th July, 1984 at the rate of Rs.11.00 per sq.mt. Reference Court found agricultural lands of village Kanjari, in all respects, relevant and comparable with the adjoining lands of village Rajpura. Placing reliance on the previous awards in respect of agricultural lands of village Rajpura and Kanjari, Reference Court, by the impugned judgment and award, determined the market value of the agricultural lands of village Rajpura at the rate of Rs. 11.00 per sq.mt. and awarded additional compensation at the rate of Rs.10.00 per sq.mt. which has given rise to filing of these appeals by the appellants.

5. Learned counsel for the appellants Mr. K.G.Sheth has taken us through entire Record & Proceedings of the Reference Court and has submitted that Reference Court has erred in relying on previous awards exh.36 & 43 which were not relevant and comparable for determination of market value of the present acquired lands. Counsel for the appellants further submitted that respondents, in support of their claim of enhanced compensation for the acquired lands, has not led sufficient evidence and, therefore, Reference Court ought not to have enhanced compensation. Counsel for the appellants had submitted that compensation offered to the claimants for their acquired lands situated at village Rajpura was excessive and, therefore, appeals be entertained and allowed. We have also heard learned counsel Mr.K.M. Sheth appearing for the respondents-claimants.

6. Submissions of learned counsel for the appellants do not deserve any merits. Acquired lands which were subject matter of previous award exh.36 was in respect of same village Rajpura wherein notification under sec. 4(1) of the Act was issued on 27th September, 1984 and the Reference Court had determined market value of the acquired lands of village Rajpura at the rate of Rs. 11.00 per sq.mt. Learned counsel for the respondents Mr. K.G. Sheth has made a statement at the Bar and has produced a letter of Narmada Water Resources & Water Supply Department indicating that the government had accepted the judgment rendered in Land Reference Case Nos. 666/90 to 688/90 and no further appeal was filed challenging the said judgment. Thus, the previous award

exh.36 in respect of acquired lands of the very same village Rajpura had become final. Division Bench of this Court (Coram : J.N.Bhatt & M.H.Kadri, JJ), by the judgment dated 6th May, 1997 rendered in First Appeal Nos. 2881/95 to 2891/95, had determined the market value of the acquired lands of village Kanjari at the rate of Rs. 11.00 per sq.mt. as on 30th July, 1984. Claimants have brought on record of these appeals that village Kanjari was adjoining village and boundaries of village Rajpura were touching the boundaries of village Kanjari. Claimants have also established that lands of both the villages were having same fertility and agriculturists were raising same crops. Thus, in our opinion, determination of the market value of agricultural lands of village Kanjari was also relevant and comparable for determination of market value of present acquired lands. It is not brought to the notice of this Court that the judgment rendered in First Appeal Nos. 2881/95 to 2891/95 was challenged in the higher forum. Taking into consideration previous award exh.36 in respect of acquired lands of village Rajpura and previous award exh.43 in respect of acquired lands of village Kanjari, Reference Court was justified in placing reliance on the above said two awards in determining the market value of the present acquired lands as on 2nd March, 1985 at the rate of Rs. 11.00 per sq.mt. It may be noted that acquired lands of previous award exh.36 came to be acquired in the month of September, 1984 and the market value of the lands of village Rajpura was determined at the rate of Rs.11.00 per sq.mt. as on 27th September, 1984. In the present appeals, lands of the respondents claimants were placed under acquisition by issuing notification under sec.4(1) of the Act on 2nd March, 1985. Even though there was a gap of about 6 months, Reference Court has not given rise in price for determination of the market value of the present acquired lands. In our opinion, the Reference Court had awarded just, adequate and reasonable compensation for the acquired lands of village Rajpura.

7. It is well settled that previous award of the Reference Court in respect of similar lands of the same village or nearby village and which has become final between the parties can be relied upon for the purpose of ascertaining market value of the lands acquired subsequently from same or adjoining village. It is also settled legal principle that one of the method for determination of market value of the acquired lands is the market value determined in previous award with respect to similarly situated lands wherein dates of notification are in near proximity in time. As stated

earlier, lands of previous awards exh. 36 & 43 and the present acquired lands were having same fertility and advantages. In our opinion, therefore, previous awards exh.36 & 43 were most comparable and relevant for determination of the market value of the present acquired lands. Determination of market value of the lands of village Rajpura as on 2nd March,1986 cannot be said to be excessive, unreasonable or on a higher side. On the contrary, Reference Court had awarded just and adequate compensation to the claimants for their acquired lands. These are the only contentions raised by the counsel for the appellants and we do not find any substance in it. Market value determined by the Reference Court at the rate of Rs.11.00 per sq.mt. as on 2nd March, 1986 is hereby confirmed. Benefits extended in favour of the respondents claimants under sec.23(1-A), 23(2) and interest under sec.28 of the Act are eminently just and proper and are hereby confirmed. It is clarified that the respondents claimants shall not be entitled to solatium on the amount under sec. 23(1-A) of the Act and interest on the amount of solatium as per settled legal position stated in the decision of the Apex Court reported in JT 1995(2) SC 583.

9. For the foregoing reasons, all the appeals fail and are summarily dismissed with no order as to costs.

5.5.2000 [M.H.KADRI, J]

[C.K. BUCH, J]

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